IN THE HIGH COURT OFBOMBAY AT GOA

SECOND APPEAL NO. 32 OF 1997

M/s. Prabhavati Naik,
C/o. Gajanana Industries,
Ducorcond, Antorlem, H.No.10,
Sanvordem, Taluka Sanguem. ... Appellant

versus

1. Government of Goa,
   through its Chief
   Secretary, Secretariat,
   Panaji-Goa.

2. Chief Electrical Engineer,
   Electricity Department,
   Government of Goa,
   Panaji-Goa.

3. Assistant Engineer,
   Electricity Department,
   Sub-Division I, Division VII,
   Curchorem-Goa. ... Respondents

Mr. D. Pangam, Advocate for the Appellant.

CORAM : N. A. BRITTO, J.

DATE : 16TH SEPTEMBER,2004.

ORAL JUDGMENT

This is Plaintiff's second appeal, arising from Regular Civil Suit No.71 of 1990.

2. The parties hereto shall be referred to in the names as

they appear in the cause title of the suit. The Plaintiff having filed a suit for declaration and permanent injunction, the same came to be dismissed for want of jurisdiction by the learned Civil Judge, Senior Division, Quepem, by her Judgment/Decree dated 21st February, 1995.

3. The Plaintiff having filed an appeal against the said Judgment/Decree dated 21st February, 1995, the same met with the same fate of dismissal by Judgment/Order dated 14th March, 1997.

4. The Plaintiff was a Defendant's consumer having obtained an electricity connection to run one of its compressors in the year 1982 or thereabout. Initially, it is the case of the Plaintiff that the monthly bill for consumption of electricity was about Rs.250/- which the Plaintiff regularly paid till the year 1986 when the consumption showed an upward trend and the bill increased to Rs.520/- for the month of December, 1986.

5. Thereafter, the Plaintiff got a bill of Rs.1,434/- for the month of September, 1987 with arrears of Rs.509/- and sundry charges of Rs.436/- which was paid by the Plaintiff but thereafter, the Defendants issued a bill to the Plaintiff for the month of October, 1987 for Rs.31,414/- which was said to be the amount of arrears in addition to Rs.1,264/- being the charges for consumption of electricity. At one stage, it appears that the said arrears of Rs.31,414/- were reduced to Rs.14,242/- and then, the Defendants

threatened the Plaintiff that in case, the said amount of Rs.14,242/- was not paid, the supply would be disconnected and, therefore, the Plaintiff approached the Court with the suit with a prayer for declaration that the arrears of Rs.14,242/- were arbitrary and in any event, the recovery of the same was barred by limitation. The Plaintiff also prayed that the Defendants be restrained from disconnecting the power supply to the said compressor of the Plaintiff.

6. The Defendants contested the suit by filing a written statement and in the said written statement, the Defendants took a preliminary objection based on Section 24 of the Indian Electricity Act,1910(Act, for short).

7. The learned trial Court was pleased to frame a preliminary issue whether the suit was not maintainable in view of Section 24 of the Act. It is this issue which came to be decided by the learned trial Court by its Judgment/Decree dated 21st February, 1995.

8. The Defendants in addition to taking up the said preliminary plea also pleaded that the electricity meter provided to the Plaintiff did not work properly till 9th February, 1984. The Defendants also pleaded that the said meter was constantly going out of order and as such M.R.T. was asked to test the installation of the Plaintiff and it was found that the Plaintiff was interfering with the

said installation by breaking the I.C. cut out and that the said meter was slow by 3.5% on low load.

9. In my view, the issue of jurisdiction could not have been decided as a preliminary issue merely on a plea taken (or not taken by the Defendants in this case) without adducing evidence in support of such plea if taken. At that stage, the plea of jusridiction had to be decided on the basis of what the Plaintiff had pleaded in his plaint.

10. The learned trial Court as well as the learned first appellate Court by placing reliance on Sections 24 nd 26(6) of the Act and the decision of the Supreme Court in the case of **Punjab State Electricity Board** v. **B. C. S. Kharar** (1994(2) Mah L.R. 878 have come to the conclusion that the Plaintiff's suit was not maintainable on account of the said provisions.

11. O 14, R 2, C.P.C. requires a Court to pronounce Judgment on all issues. Sub-Rule 2 of R 2 of O 14 provides that where issues, both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

a). the jurisdiction of the Court, or

b). a bar to the suit created by any law for the time being in force, and for that purpose, may, if it thinks fit, postpone the settlement of the other issues until

> after that issue has been determined and may deal with the suit in accordance with the decision on that issue.

12. The Defendants have chosen to remain absent. I have heard Mr. D. Pangam, learned Counsel of the Plaintiff.

13. Section 24 of the Indian Electricity Act, 1910(Act, for short) deals with discontinuance of supply to consumer neglecting to pay charge, and, sub-section 1 thereof provides that where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer. Sub-Section 2 of Section 24 of the Act on which the controversy is based reads as follows:-

> (2). Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the

> licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:
>
> Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.

14. Sub-Section 26 of the Act deals with meters, and, sub-section 1 thereof provides that in the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

15. Sub-Section 6 of the Act on which the controversy is also based reads as follows:-

> 6. Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical

> Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:
>
> Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

16. Mr. Pangam, learned Counsel of the Plaintiff, has submitted that both the Courts below have wrongly applied the ratio of the case of **Punjab State Electricity Board** v. **B.C.S.Kharar** (supra). Mr. Pangam, learned Counsel has next submitted that in case the Defendants case was that the Plaintiff had tampered with the meter such a matter could not have been decided by the Electrical Inspector. Mr. Pangam, has also submitted that the Defendants had not invoked the jurisdiction of the said Electrical Inspector.

17. Mr. Pangam, has placed reliance on the cases of **Madhya Pradesh Electricity Board and others** v. **Basantibai**((1988) 1 SCC 23 and **Topasa Ramasa Patil** v. **Karnataka Electricity Board, Bangalore and others**(AIR 1989 Karnataka 279).

18. The case of **Punjab State Electricity Board** v. **B.C.S. Kharar**(supra) was a case where the Plaintiff's electricity supply was disconnected and the Plaintiff with a view to claim damages and to decide about its quantum called upon the Board to appoint its arbitrator within a period of fifteen days which was not appointed and the Board filed an application before the Court of Senior Sub-Judge, Patiala, under Section 33 of the Arbitration Act, 1940 to quash the arbitration proceedings initiated by the Respondent/Basi Cold Storage. Referring to condition 29 of the Conditions of supply of electricity to consumers by the Board, the Supreme Court observed that a close reading of the aforesaid condition shows two types of differences or disputes. These are: (i) difference or dispute arising between the Board and the consumer in respect of any matter connected with the supply; and (ii) difference or dispute arising as to the interpretation of the conditions or the terms of any agreement between the Board and the consumer. If the dispute or difference be of the first nature, what has been stated in the operative part would come into play if the same cannot be determined by the conditions or the terms of any agreement between the Board and the consumer. In such a case, the first difference or dispute, and the second difference or dispute in any case shall be determined in accordance with the provisions of the Act or by reference to the Chief Electrical Inspector. In the event the aforesaid two disputes or differences cannot be determined in the manner indicated in the main part of condition

No.29, the provisions of the Indian Arbitration Act shall apply qua that difference or dispute. Ultimately, the Supreme Court even observed that Respondent No.1-Basi Cold Storage was free to approach a Civil Court seeking the reliefs in question, despite the delay. It is, therefore, obvious that, as rightly pointed out on behalf of the Plaintiff, the Judgment in the aforesaid case was clearly inapplicable to the facts of the case at hand.

19. In the case of **Madhya Pradesh Electricity Board and others** v. **Basantibai**(supra) the Supreme Court observed that it is evident from the provisions of this Section that a dispute as to whether any meter referred to in sub-section (1)(of Section 26) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties and it is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-section (6) of Section 26. Such a dispute regarding the commission of

fraud in tampering with the meter and breaking the body seal is outside the ambit of Section 26(6) of the said Act.

20. In the case of **Topasa Ramasa Patil** v. **Karnataka Electricity Board, Bangalore and others** (supra) the Karnataka High Court has held that in matters of slow and faulty recording of the meter it is only the Electrical Inspector who is authorised to decide the dispute. If the meter is not working properly that is undoubtedly a dispute and this dispute has to be decided by the Electrical Inspector. Therefore, if the Electricity Board wants to raise a bill in regard to the actual consumption of energy not correctly recorded by the meter, it has to approach the Electrical Inspector and get the same tested and settled. It cannot unilaterally raise a bill without reference to the Electrical Inspector as provided under Section 26(6) of the Act.

21. Admittedly, in the case at hand, the Plaintiff had claimed that the demand of the arrears of Rs.14,242/-- was both arbitrary and time barred and in that context had sought a declaration. It was not the case of the Plaintiff or for that matter the Defendants that the meter was faulty. In fact, it was the case of the Defendants that it is the Plaintiff who was tampering with the said meter and that was the reason why the Plaintiff was being issued bills initially for low consumption. Now, admittedly, a plea taken by the Defendants in their written statement could have been proved only at the trial of the

suit. Admittedly, both the parties had not invoked the jurisdiction of the said Electrical Inspector in terms of Section 26(6) of the Act for the Electrical Inspector to assume jurisdiction and for the Civil Court not to exercise the jurisdiction. The dispute as pleaded by the Plaintiff as well as pleaded by the Defendants was not a dispute which was covered by either sub-section 2 of Section 24 of the Act or sub-section 6 of Section 26 of the Act and, therefore, the Civil Court had the jurisdiction to entertain and proceed with the trial of the suit.

22. Consequently, the Judgments of both the Courts below deserve to be set aside and the suit remanded to the learned trial Court to dispose off the same on merits and in accordance with law. There shall be no order as to costs.

N. A. BRITTO, J.

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